In the

Supreme Court of the United States

October Term, 1970

No. 1613

Callman Gottesman, Maria Mattiello
and Paul J. Peyser,

Petitioners,

v.

General Motors Corporation and
E. I. du Pont de Nemours & Company,

Respondents.

STATEMENT OF RESPONDENT GENERAL MOTORS CORPORATION IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Statement

Respondent General Motors Corporation ("General Motors") submits this Statement for the purpose of stating its position in this litigation and the basis for that position. It also urges that the Petition for Writ of Certiorari should be denied for the reasons set forth in the Brief of the Respondent E. I. duPont de Nemours & Company ("duPont").

Petitioners imply that the opposition by "the management" of General Motors to this action "for the benefit of

its shareholders" is attributable to the duPont stock interest. (Pet. 9.) No such implication is justified.[1]

It is true that General Motors has opposed this action throughout and continues to do so with full vigor. It has done so in the considered conviction, which is established by the evidence in the case, that the business transactions which are the basis for this action were at all times at arm's length and at marketplace prices. Neither General Motors nor its stockholders suffered injury as a result of its purchases from duPont.[2]

This Court so indicated in its 1957 decision when it said:

> "We agree with the trial court that considerations of price, quality and service were not overlooked by either duPont or General Motors." 353 U.S. 586, 606; and
>
> ". . . all concerned in high executive posts in both companies acted honorably and fairly, each in the honest conviction that his acts were in the best interests of his own company and without any design to overreach anyone, including duPont's competitors . . . ." *ibid.*, 607.

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[1] Citing only duPont's divestiture of its ownership of General Motors stock, Petitioners disregard the partial divestiture ordered by the trial court in the Government case on October 2, 1959. (177 F.Supp.1.) That decision preceded General Motors answer herein, dated November 27, 1959, and required pass through of duPont's voting rights and withdrawal of all duPont designees from the General Motors Board of Directors. The period in suit herein is 1950, when one of the Petitioners first acquired General Motors common stock, to 1959.

[2] It is of interest that Government counsel during oral argument before this Court in the original appeal of the Government case acknowledged:

> "They (duPont) have not been using their stock control in order to bring an advantage to them which would be a disadvantage to General Motors and General Motors stockholders." (Tr. p. 168.)

Having heard the testimony, the Trial Court in both of its opinions expressly found that no injury to General Motors had been proved in this case. (Pet. App. 19, 89.)

With reference to the Trial Court's findings on this question, the Court of Appeals concluded:

> "All these findings by the Trial Judge are supported by substantial evidence and we cannot say that they are erroneous, let alone clearly so. We, therefore, may not set them aside. Rule 52(a), F.R.Civ.P." (Pet. App. 12.)

The basic issue here is between the Petitioners and duPont. It turns on whether or not General Motors sustained injury in its purchases from duPont. The Trial Court below having found, and the Court of Appeals having affirmed, that the purchases were made on the basis of the considered business judgment of General Motors and on competitive merit (Pet. App. 11-12, 73, 84), there is nothing in this issue which requires, or would merit, further consideration by this Court.

CONCLUSION

General Motors accordingly submits that the Petition should be denied.

Respectfully submitted,

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